

## **REMARKS**

Applicants kindly thank the Examiner for his time to discuss this case by telephone. Reconsideration and withdrawal of the Examiner's rejections under 35 USC §§102 and 103 is requested in view of the foregoing amendments and the following remarks.

### **35 USC §102**

The examiner has rejected claims 29, 30, 32, 33, 36-41, 43-45, 51, 54, and 61 under 35 U.S.C. 102(b) as being anticipated by Chaussee, US 5,334,325, asserting that Chaussee teaches post-foaming gels dispensed from a piston can (see abstract), that an example of such a composition comprises 22.5% phosphate ester anionic surfactant, 1.47% oleyl betaine, 0.5% ethoxylated alcohol, propylene glycol, cyclomethicone, 50% water, and a pentane/isobutane foaming agent (col. 9, example 7) that with respect to specific properties such as viscosity and lamellar structure, as the composition of the reference contains the precise components in the precise concentrations of the present claims, the examiner maintains the composition will inherently exhibit these properties, and that as this reference meets all material limitations of the claims at hand, the reference is anticipatory.

The examiner has rejected claims 29, 30, 32, 33, 36, 38, 44, 45, 47-51, 54, and 61 under 35 U.S.C. 102(e) as being anticipated by Marchesi et al, US 6,682,726, asserting that Marchesi et al teach self-foaming shaving lotions (see abstract), that an example of such a composition comprises 10.78% sarcosinate anionic surfactant, 0.53% carrageenan gum, glycerin, 78.57% water, and an isopentane/isobutane foaming agent wherein the composition is dispensed in a piston can (referred to in the example as bottom-gassed cans) (col. 5, example 8), that with respect to specific properties such as viscosity and lamellar structure, as the composition of the reference contains the precise components in the precise concentrations of the present claims, the examiner maintains the composition will inherently exhibit these properties, and that this reference meets all material limitations of the claims at hand, the reference is anticipatory.

The examiner has rejected Claims 29, 30, 32, 33, 36, 38-40, 44-50, 54, and 61 under 35 U.S.C. 102(b) as being anticipated by George et al, US 5,500,211, asserting that George et al teach self-foaming shaving gels (see abstract), that an example of such a composition comprises 7.5% myristoyl sarcosinate, 1% ethoxylated alcohol, myristyl alcohol, 4.5% mineral oil, hydroxyethyl cellulose, hydroxypropyl cellulose, polyquaternium-10, 74.5% water, and an isopentane/isobutane foaming agent wherein the composition is dispensed in a piston can (referred to in the example as a barrier-type aerosol container) (Col.5, example 4), that with respect to specific properties such as viscosity and lamellar structure, as the composition of reference contains the precise components in the precise concentrations of the present claims, the examiner maintains the composition will inherently exhibit these properties, and as this reference meets all material limitations of the claims at hand, the reference is anticipatory.

In response, applicants have amended independent claim 29 to clearly distinguish the instant invention over Chausee, Marchesi et al., and George et al., to include the limitations of Claim 43. Claim 43 has been cancelled as being redundant and Claim 53 has been amended to correct its dependency. No new matter has been added by this amendment.

Chausee relates to a delayed gelling postfoaming composition based upon alkoxylated alcohol phosphate ester surfactants. Chausee does not disclose or suggest a composition that contains an lamellar structurant which is a specific alkenyl or branched alkyl fatty acid or ester thereof, or a specific alkenyl or branched alkyl fatty alcohol or ether thereof that amended Claim 29 requires. Marchesi et al., similarly relates to a self-foaming shaving lotion with C16 or C18 normal alkyl fatty acid emollients in its examples and not a lamellar composition having specific lamellar structurants as is required by amended Claim 29. Lastly, George et al., relates to a soap free, self-foaming shave gel composition, and not a lamellar composition. Examples 1-5 of George et al. (column 5) all disclose thickened gel compositions containing various levels of myristyl alcohol and are thickened with water soluble cellulosic derivatives. Examples containing myristyl alcohol do not anticipate Claim 29 as presently amended because myristyl alcohol has a melting point of 38°C, which is above the 25°C maximum melting point limit for alcohols which are claimed as lamellar structurants (see Merck Index, 13<sup>th</sup> edition, 2001).

**35 USC §103**

The examiner has rejected claims 29, 30, 32, 33, and 36-61 under 35 U.S.C. 103(a) as being unpatentable over Sporri, US 5,127,566 in view of Dixon, US 6,407,044, asserting that Sporri teaches piston can formulations (see abstract), that Sporri teaches that piston cans are particularly well suited and in wide use for post-foaming shaving gel products (col. 1, lines 10-38), and that Sporri does not teach the specific post-foaming compositions of the present claims. The examiner further asserts that Dixon teaches aerosol personal cleansing compositions (see abstract), that an example of such a composition is a shower gel base comprising 4.73% sodium lauryl ether sulfate, 3% glycerin, 5.25% lauroamphoacetate, 2.43% palm kernel fatty acid, 0.4% cationic polymer, and the balance water wherein the base is dispensed in a pressurized mixer containing 85-97% base and 3-15% propellant (col. 15, example 1), that another example comprises 5.13% sodium lauryl ether sulfate, 0.5% petrolatum, 7.5% soybean oil, and the balance water wherein the base is dispensed in a pressurized mixer containing 85-97% base and 3-15% propellant (col. 15, example F), that the viscosity of these compositions may be as high as 100,000 cps (col.11, lines 30-44), and that with respect to the present compositions being present in a lamellar phase, as fatty acids are well known in the art as lamellar structurants, the examiner maintains these examples will inherently exhibit this property.

The examiner asserts that it would have been obvious to one of ordinary skill in the art to package the composition of Dixon in a piston can and so meet the limitations of the claims at hand as Sporri teaches that piston cans are particularly well suited and in wide use for post-foaming shaving gel products. Applicants respectfully traverse this rejection.

Dixon relates to aerosol personal cleansing emulsion compositions which contain low vapor pressure propellants and that are packaged into an appropriate aerosol container including aerosol metal containers and bag-in-bottle or bag-in-can containers (see col. 16, lines 10-13). As the examiner admits, there is no disclosure or suggestion in Dixon of a composition that can be packaged in an aerosol container that contains an imperfect barrier seal such as an aerosol piston can. Such piston cans require unique rheological properties so that the composition does not flow by the piston and become contaminated with the aerosol propellant contained in the container. None of Dixon's examples disclose a liquid cleansing and moisturizing composition and dispensing system comprising a neat cleansing lotion and a

volatile foaming agent formulated therein having an initial viscosity greater than 40,000 cps measured at 10Pa at 25° C, which is contained in a piston can as presently claimed. Dixon's examples disclose compositions having a rheology suited for an aerosol container that has no barrier or a bag-in-bottle or bag-in-can that has a perfect barrier. Dixon therefore does not disclose a lamellar structured self-foaming composition with rheological properties suitable for aerosol piston cans. Moreover, as discussed in the previous declaration submitted in the instant case, the viscosities of all of Dixon's examples are measured *before* the addition of a hydrocarbon propellant at a 25° C with a shear rate of 3.84 sec.<sup>-1</sup>. It is apparent that Dixon cannot anticipate or suggest the instant claims which required the viscosity to be measured *after* the addition of the hydrocarbon propellant and at 4° C with a shear rate of less than 0.25 sec.<sup>-1</sup>. These lamellar materials are non-Newtonian and exhibit non-linear viscosity changes as a function of shear, temperature and formulation. Measurements at one set of conditions are not predictive of results at another set of conditions.

Sporri discloses an aerosol can piston and system suitable for post-foaming shaving gel products (see col. 1, line 15). Although Sporri suggests that self-foaming shaving gel products may be packaged in an aerosol piston can, Sporri does not remedy the deficiencies of Dixon with respect to disclosing or suggesting a specific lamellar composition having an initial viscosity greater than 40,000 CPS measured at 10Pa at 25° C, or in other words with respect to disclosing or suggesting that a lamellar composition with specific properties can be successfully packaged in an aerosol piston can.

### **Summary**

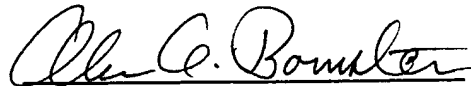
In summary, by the present amendments, claim 29 is amended to include the limitation that the cleansing composition contains one or more specific lamellar structurants. Claim 43 has been cancelled because it is redundant in light of this amendment, and claim 53 has been amended to correct its dependency. Applicants submit that no new matter has been added by these amendments.

**CONCLUSION**

In light of the above amendment and remarks, applicants submit that the claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested.

If a telephone interview would facilitate prosecution of the application, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Alan A. Bornstein", written in black ink.

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